

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
ROBERT KOEHLER and)	Bankruptcy Case No. 99-32350
DANA KOEHLER,)	
)	
Debtors.)	
_____)	
)	
DONALD M. SAMSON, Trustee,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Case No. 00-3057
)	
FORD MOTOR CREDIT COMPANY,)	
)	
Defendant.)	

OPINION

This matter having come before the Court on a Complaint to Avoid Preferential Transfer filed by Trustee, Donald M. Samson; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On August 17, 1999, Debtors filed for relief under Chapter 7 of the Bankruptcy Code. Prior to their Chapter 7 bankruptcy filing, the Debtors, on May 8, 1999, purchased and received possession from Koetting Ford a 1999 Ford Windstar LX, for the sum of \$21,673. Debtors entered into a retail installment contract for purchase of the vehicle with Koetting Ford, and the contract was subsequently assigned to

Defendant, Ford Motor Credit Company. The face of the title indicates that the lien in favor of Ford Motor Credit Company was recorded on the title on June 24, 1999. The records of the Secretary of State for the State of Illinois show that the application for title was received by the Secretary of State on June 1, 1999, and validated by the Secretary of State on June 2, 1999, a period more than 21 days after the date of the purchase of the subject vehicle and within 90 days of the date of filing of the Debtors' bankruptcy petition.

In his Complaint, the Trustee seeks to avoid the lien of Ford Motor Credit Company on the 1999 Ford Windstar as being preferential under 11 U.S.C. § 547(b), which states:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property -

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made -

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if -

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

Pursuant to 11 U.S.C. 547(c)(3):

(c) The trustee may not avoid under this section a transfer - . . .

(3) that creates a security interest in property acquired by the debtor -

(A) to the extent such security interest secures new value that was -

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 20 days after the debtor receives possession of such property;

It is the position of Defendant, Ford Motor Credit Company, that every attempt was made to perfect the lien of Ford Motor Credit Company within 20 days of the date of purchase of the subject vehicle, thus making the lien unavoidable pursuant to 11 U.S.C. § 547(c)(3). Perfection of a security interest in a vehicle is governed by Illinois law under 625 ILCS 5/3-202, which states:

(a) Unless excepted by Section 3-201, a security interest in a vehicle of a type for which a certificate of title is required is not valid against subsequent transferees or lienholders of the vehicle unless perfected as provided in this Act.

(b) A security interest is perfected by the delivery to the Secretary of State of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee. It is perfected as of the time of its creation if the delivery is completed within 21 days thereafter, otherwise as of the time of the delivery.

The evidence in this case indicates that the application for title and request to have the lien of Ford Motor Credit Company noted on the title to the subject vehicle was originally made to the Secretary of State's Office on May 19, 1999, within 20 days of the date of the purchase of the vehicle. However, the evidence also indicates that the application for title was not validated by the Office of the Secretary of State until June 2, 1999, a period in excess of 20 days from the date of purchase and within 90 days of the date of Debtors' bankruptcy filing. The only evidence before the Court concerning why the title in question was not validated until June 2, 1999, is the testimony of Donald A. Kerber, Legislative Liason for the Vehicle Services Department of the Office of the Secretary of State. Mr. Kerber's testimony indicates that, for some reason, the original application for title hand-delivered to the Office of the Secretary of State on May 19, 1999, by a remittance agent, was initially rejected and that the title application was not then resubmitted until June 1, 1999, and validated by the Secretary of State on June 2, 1999.

It is Ford Motor Credit Company's position that delivery of the title application actually took place on May 19, 1999, and, thus, pursuant to 625 ILCS 5/3-202, perfection of Ford Motor Credit Company's security interest occurred on May 19, 1999, which was the time of delivery of the title application. Based upon the only uncontroverted evidence before it, the Court must conclude that delivery of the title application did not occur on May 19, 1999, due to the fact that the Secretary of State's Office did not accept the title application, but rather rejected it, causing the need for its resubmission. The evidence is clear that the title application was not resubmitted until June 1, 1999, a date well within 90 days before the filing of the Debtors' bankruptcy petition and in excess of 20 days after the date Debtors received possession of the subject vehicle. As such, the Court concludes that the Trustee has proven all of the elements of preferential transfer pursuant to 11 U.S.C. § 547(b), and that the transfer in question does not fall within the exception set forth in 11 U.S.C. § 547(c)(3). Thus, the Trustee's Complaint to Avoid Preferential Transfer as to Defendant, Ford Motor Credit Company, must be allowed.

ENTERED: August 28, 2000.

/s/ GERALD D. FINES
United States Bankruptcy Judge